

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JAMES HARBIN  
Plaintiff

V.

NO. 3:95CV84-B-A

ROSIE WASHINGTON, LEE MURPHREE,  
THREASA FILES, and GRENADA  
POLICE DEPARTMENT  
Defendants

**MEMORANDUM OPINION**

This cause comes before the court upon the defendants' motion to dismiss, or in the alternative, for summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

**FACTS**

The plaintiff, James Harbin, was arrested on or about November 10, 1993, by the Grenada Police Department on the charge of transfer of a controlled substance (crack cocaine) to a minor. According to his complaint, the plaintiff spent seventy-five days in jail before being released when the grand jury dismissed his indictment. The plaintiff has filed this action under 42 U.S.C. § 1983 for deprivation of various constitutional rights arising out of his allegedly false arrest and malicious prosecution. The gravamen of the plaintiff's complaint is that the defendants had no probable cause to arrest him on the aforementioned charge.

On November 9, 1993, the defendants, who are all detectives in the Grenada Police Department, set up a controlled crack purchase at the plaintiff's house with the help of a confidential informant. The defendants gave the confidential informant \$20.00 in marked money, and watched from a hidden location while the informant made an exchange through one of the windows of the plaintiff's house. Afterwards, the defendants recovered one rock of crack cocaine from the informant. A few hours later, the defendants and the informant repeated the transaction with another \$20.00 in marked money. The first purchase was made from a black female, approximately 35 years of age. The second purchase was made from a black male, 15 years of age. After the second controlled buy, the defendants obtained a warrant to search the plaintiff's house.

When the detectives arrived to search the house, the plaintiff was not present, but Terry Yates, the juvenile from whom the second purchase was made, was present. Upon searching the plaintiff's house, the defendants found crack cocaine, drug paraphernalia, and the marked money from the earlier controlled buys. Half of the marked money was found on Yates, and the other half was found in the glove compartment of the plaintiff's automobile. While searching the house, the detectives received 15-20 telephone calls from people seeking to purchase crack cocaine, and another 11 people came to the house to make a purchase of crack.

After completing the search, Detective Murphree obtained an arrest warrant for the plaintiff on the charge of transfer of a controlled substance to a minor. In obtaining the arrest warrant, Detective Murphree submitted an affidavit in which he recounted in detail the following:

- (1) Yates had confessed to the sale of cocaine;
- (2) Yates stated that Harbin had given him the cocaine to sell, with the intention of returning later to collect the proceeds; and
- (3) Yates stated that Harbin often operated this way, leaving him crack to sell and returning later to retrieve the cash.

In July of 1995, nearly two years after Harbin's arrest, Yates signed an affidavit in which he stated that Harbin had never given him any cocaine, and in which he implied that he had been coerced into testifying against Harbin. In his affidavit, Yates never denies telling the police that Harbin gave him the cocaine to sell. However, Yates does assert that he initially denied that Harbin had given him the cocaine. Yates then states that the police attempted to talk him into implicating Harbin, implying that he changed his story under pressure.

#### **LAW**

To maintain a cause of action under 28 U.S.C. § 1983 against the municipality, or against any of the individual defendants in their official capacity, the plaintiff must allege that the deprivation of his constitutional rights resulted from the

implementation of a policy or custom of the municipality. Monell v. Department of Social Servs., 436 U.S. 658, 690-694, 56 L. Ed. 2d 611, 635-638 (1978); Bennett v. City of Slidell, 735 F.2d 861, 862 (5th Cir. 1984), cert. denied, 472 U.S. 1016, 87 L. Ed. 2d 612 (1985). The plaintiff, despite ample opportunity to do so, has failed to make such allegations. After filing his original complaint, which was deficient in the allegations against the municipality, the plaintiff was given an opportunity to amend his complaint to state his "best case." The plaintiff did file an amended complaint, but again failed to make any claims that his alleged constitutional deprivations arose out of any policy or custom of the municipality. Therefore, the court finds that the plaintiff's claims against the municipality and against the individual defendants in their official capacity should be dismissed.

The officers have raised the defense of qualified immunity as to any claims made against them in their individual capacity. Qualified immunity shields government officials from civil liability if their conduct does not violate a clearly established constitutional right of which a reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818, 73 L. Ed. 2d 396, 410 (1982). Qualified immunity is not just immunity from judgment, but rather is immunity from all aspects of suit. Jacquez v. Procunier, 801 F.2d 789, 791 (5th Cir. 1986).

To avoid dismissal, the plaintiff must plead specific facts which, if true, would defeat qualified immunity. Wicks v. Mississippi State Employment Servs., 41 F.3d 991, 994-997 (5th Cir. 1995), cert. denied, \_\_\_ U.S. \_\_\_, 132 L. Ed. 2d 809 (1995). If the plaintiff's complaint does not contain specific allegations sufficient to defeat qualified immunity, the plaintiff should be given an opportunity to amend his complaint so as to allege facts that would overcome the defense. Wicks, 41 F.3d at 997; Jacquez, 801 F.2d at 792. In the present case, the plaintiff was given an opportunity to amend his original complaint; however, the plaintiff's amended complaint failed to offer any specific allegations which would defeat the qualified immunity defense.

The validity of the defendants' qualified immunity defense turns on the issue of probable cause. If the defendants had probable cause to arrest the plaintiff, then the constitutional rights the plaintiff claims to have been deprived of were not violated. From the facts presented to the court, the defendants had sufficient probable cause with which to obtain a warrant for the plaintiff's arrest.

Probable cause requires an honest belief in the guilt of the accused and reasonable grounds for such belief. Strong v. Nicholson, 580 So. 2d 1288, 1294 (Miss. 1991). "Whether officers have probable cause depends on whether, at the time of the arrest, the facts and circumstances within their knowledge and of which

they have reasonably trustworthy information were sufficient to warrant a prudent man in believing that [the accused] had committed or was committing an offense.'" Brown v. Bryan County, 67 F.3d 1174, 1180 (5th Cir. 1995) (quoting United States v. Maslanka, 501 F.2d 208 (5th Cir. 1974), cert. denied, 421 U.S. 912, 43 L. Ed. 2d 777 (1975)). The existence of probable cause is generally a question of law for the court to decide. See Strong 580 So. 2d at 1294.

In the present case, the detectives had an overwhelming amount of evidence with which to find probable cause for the arrest warrant. First and foremost was Yates' statement in which Yates attested that Harbin had given him the cocaine to sell. In further support of probable cause were the following facts:

- (1) the detectives had observed two controlled buys at Harbin's residence;
- (2) the detectives had discovered crack cocaine and cocaine-associated paraphernalia at Harbin's residence;
- (3) the detectives found a portion of the marked money used in the controlled buys in the glove compartment of Harbin's automobile; and
- (4) while at Harbin's residence, the detectives received numerous telephone calls from people wanting to purchase cocaine, and several people came to the house to purchase cocaine.

Considering the tremendous weight of the evidence available to the detectives, there can be no question that there was probable cause for the issuance of the arrest warrant.

As previously described herein, in July of 1995, Yates signed an affidavit in which he implied that he was coerced into implicating Harbin. The defendants, rather than the plaintiff, have submitted Yates' affidavit to the court. The plaintiff has not asserted that Yates' affidavit supports his allegation of a lack of probable cause for the arrest warrant. Nevertheless, the court has considered whether Yates' affidavit in any way lessens the defendants' probable cause. The court finds that Yates' affidavit does nothing to harm the reasonableness of the defendants' beliefs at the time of the arrest. Yates does not deny telling the detectives that Harbin gave him the cocaine to sell. Yates' affidavit merely states that he initially refused to implicate Harbin, and implies that he changed his mind after being warned of the trouble that Yates, himself, was facing. Such a factual scenario is not unusual in the course of a police investigation. Often a suspect/witness will initially refuse to cooperate with the authorities, but will change his mind in an effort to gain leniency. The court finds that Yates' affidavit nearly two years after the fact is of no consequence to the issue of the reasonableness of the defendants' probable cause at the time they obtained the arrest warrant.

Qualified immunity allows public officials to carry out their duties without fear of being subjected to suit for their official action. Without the shield of qualified immunity, all but the most

resolute would be hampered in the performance of their duties. As stated by the Fifth Circuit in Jacquez:

...if the protections afforded public officials are not to ring hollow, plaintiffs cannot be allowed to continue to amend or supplement their pleadings until they stumble upon a formula that carries them over the threshold. Such a protracted process is likely to disrupt public officials from their duties as much as discovery itself. At some point a court must decide that a plaintiff has had fair opportunity to make his case; if, after that time, a cause of action has not been established, the court should finally dismiss the suit.

Jacquez, 801 F.2d at 792. In this action, the plaintiff has filed an original and amended complaint, as well as a "Motion to Object to Immunity" in response to the defendants' motion to dismiss. The court finds that the plaintiff has stated his "best case" to defeat qualified immunity. However, since the plaintiff's "best case" is not sufficient to overcome the defense of qualified immunity, the court finds that the plaintiff's claims against the officers in their individual capacity should be dismissed.



### CONCLUSION

For the foregoing reasons, the court finds that the defendants' motion to dismiss is well-taken and should be granted. The plaintiff has failed to state a viable claim under 28 U.S.C. § 1983 against the municipality or the officers in their official capacity. Furthermore, since the defendants had probable cause with which to arrest the plaintiff, they are entitled to qualified immunity on all claims brought against them in their individual capacity.

An order will issue accordingly.

THIS, the \_\_\_\_\_ day of March, 1996.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE